

eMARS End-User Training

Personal Service Contracting - 615

July 2007



Kentucky
UNBRIDLED SPIRIT™

Personal Service Contracting – 615

- **Welcome and Introductions**
- **Class Delivery and Expectation**
- **Class Duration**
- **Questions - Parking lot**



Why are we here?

- ◆ **This class is mandatory for all Executive Branch Staff, Director or above and optional for any other interested parties.**
- ◆ **But, “I don’t do contracting”**
- ◆ **Outgrowth of monthly meetings with GCRC co-chairs and Exceptions Committee issues**



Agenda

Learning Objectives

- At the conclusion of this session, you should know:
- What is a Personal Service Contract?
- The laws governing PSC's
- Critical components of a PSC.



Agenda (Continued)

Learning Objectives

- Proof of Necessity information.
- Role of Exceptions Committee
 - Sole Source
 - Start Dates
- Role of Government Contract Review Committee
- Importance of eMARS
- **How to Stay Out of Trouble!**



What is a PSC?

- "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring **professional skill or professional judgment** for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a governmental body or political subdivision of the Commonwealth and any other entity in any amount.

KRS 45A.690



Exemptions



- **Parks and Performing Artists if less than \$5,000/year**
- **Public utilities**
- **Foster Parents, Providers of direct Medicaid Health care, Homemaker services**
- **Between State Universities and employers of students in work study programs**
- **Agreements with rural concentrated employment programs**
- **Between State Fair Board and judges, officials and entertainers**
- **Any other contract that the committee deems inappropriate for consideration.**

What is an MOA?

"Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services **between a state agency and any other governmental body or political subdivision of the Commonwealth** that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782.

KRS 45A.690



Exemptions

There are many exceptions to what is considered a MOA. They are listed in KRS 45A.690

- Agreements between KYTC and any political subdivision for road and road related projects.
- Agreements between Auditor of Public Accounts and any governmental agency.
- Agreements between state universities.
- Non-financial agreements.



Laws & Policies

KRS 45A.690 – Definitions

KRS 45A.695 – PSC Procedures

KRS 45A.700 – Exemptions

PSC Less than \$10,000 or MOA Less than \$50,000

Filed for Informational Purposes Only

**KRS 45A.705 – Government Contract Review
Committee**

FAP-111-43-00 – Personal Service Contracts

FAP-111-44-00 – Memoranda of Agreement



KRS 45A.695 (1)

Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body, until notification of the personal service contract is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty 30) days notice to the contractee.

¹"Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;

KRS 45A.695 (2)

Each personal service contract and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically.

KRS 45A.695 (3)

Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals.² The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.

² An agency desiring to procure a professional service shall issue a Request for Proposals (RFP) in the state's procurement system. An agency shall post the RFP to the Commonwealth's eProcurement web site for a minimum of seven (7) days.

FAP-111-43-00 (1a)



KRS 45A.695 (4)

The head of the contracting body or his designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.



KRS 45A.695 (5)

Award shall be made to the offeror determined by the head of the contracting body, or his designee, **to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation.** If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. **All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.**



KRS 45A.695 (6)

- The committee shall maintain a record or have readily accessible records of the date on which each personal service contract and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts and memoranda of agreement shall be made available for public inspection.



KRS 45A.695 (7)

Payment on personal service contracts and memoranda of agreement submitted to the committee for approval shall not be made for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.



KRS 45A.695 (8)

In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.



KRS 45A.695 (9)

If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.



Critical Components

The agency shall award a contract electronically from a bid evaluation in the state's procurement system. The contract shall include all terms and conditions agreed upon; the sworn statement regarding campaign finance laws required by KRS 45A.110(2) and 45A.115; the statement regarding revealing of violations of and compliance with certain KRS chapters required by KRS 45A.485; the Legislative Research Commission (LRC) Proof of Necessity (PON) form; language regarding access to documents required by 200 KAR 5:314; and language of KRS 45A.695(7) regarding payment and cancellation clause required by 45A.695(1). If any changes are made to the agreement along the electronic route, a new copy shall be forwarded to the second party for agreement to the changes.

FAP-111-43-00 (1)(d)



Critical Components

- **Terms and Conditions**

- Scope of Work
- Conditions for Payment
- Time periods required
- All applicable boilerplate language
- All negotiated items

It must be written to be enforceable



Critical Components

Sworn Statement Regarding Campaign Finance Laws and Revealing of Violations of and Compliance with certain KRS chapters required by KRS 45A.485

This form requiring notarization is available as Standard Attachment #2 on the eProcurement page under the Standard Attachments and General Terms link. It should be included in each RFP and required prior to award.



Critical Components

Language Regarding Access to Documents required by 200 KAR 5:314; and Language of KRS 45A.695(7) Regarding Payment and Cancellation Clause required by 45A.695(1).

These requirements are covered in the PSC1 Terms and Conditions Template under the Certification, Effective Date and Cancellation Clauses.



Proof of Necessity

- (a) The need for the service;
- (b) The unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
- (c) The total projected cost of the contract or agreement and source of funding;
- (d) The total projected duration of the contract;
- (e) Payment information, in detail;
- (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
- (g) Such other information as the committee deems appropriate.



Finance Exceptions Committee

Who are they?

Secretary of the Finance and Administration Cabinet

Executive Director – Office of Material and
Procurement Services

Commissioner – Facilities and Support Services

Director – Fleet Management

Deputy Commissioner - COT



Finance Exceptions Committee

What do they do in regards to Personal Services Contracts?

Anything that does not follow the procedures outlined in
KRS 45A.695

- ◆ Exemption from issuing competitive Request for Proposals

Sole Source

Not Practicable or Feasible to Bid

- ◆ Requests for Emergency Start Date



Finance Exceptions Committee

How to submit request

For PSC's, submit to:

Darla Hoagland, OMPS

Darla.Hoagland@ky.gov

For Goods and Services:

Gina Jesse

Gina.Jesse@ky.gov



Government Contract Review Committee

- Provide legislative review of all nonexempt memoranda of agreement by and between state agencies and of all nonexempt personal service contracts by state agencies and by off-budget agencies that include, but are not limited to, the Kentucky Lottery Corporation, the Kentucky Housing Corporation, state universities within the Commonwealth, the Kentucky Employers' Mutual Insurance Corporation, the Kentucky Higher Education Assistance Authority, Kentucky Student Loan Corporation, the Kentucky Retirement Systems, and other municipal corporations, to examine the stated need for the service, whether the service could or should be performed by state personnel, the amount and duration of the contract or agreement, and the appropriateness of any exchange of resources or responsibilities.



Government Contract Review Committee

Who are they?

- ♦ Sen. Vernon McGaha [Co-Chair]
- ♦ Rep. Dennis Keene [Co-Chair]
- ♦ Sen. Carroll Gibson
- ♦ Sen. Ernesto Scorsone
- ♦ Sen. Elizabeth Tori
- ♦ Rep. Jesse Crenshaw
- ♦ Rep. Brad Montell
- ♦ Rep. Brent Yonts



Committee Staff

- Kim Eisner, Committee Staff Administrator
- Matt Ross
- Jennifer Wilson, Committee Assistant



Government Contract Review Committee

What do they do?

- Approve without objection
- Object or disapprove
- What happens then?

Government Contract Review Committee

- <http://www.lrc.ky.gov/Committee/statutory/GovContr/home.htm>

Additional information on Committee Policies



eMARS and PSCs

FAP-111-43-00 (1)(a)

An agency desiring to procure a professional service shall issue a Request for Proposals (RFP) in the state's procurement system.

FAP-111-43-00 (1)(d)

The agency shall award a contract electronically from a bid evaluation in the state's procurement system.

FAP-111-43-00(1)(f)

The agency shall maintain the original contract, signed by both parties, and the contract shall be available for review upon request. The electronic contract shall be forwarded through the agency and the Finance and Administration Cabinet for appropriate approvals. The Finance and Administration Cabinet shall file the contract with LRC.



eMARS and PSCs

- All payments referencing contracts and awards established in the state's procurement system shall be made in the state's procurement system and reference the appropriate award.

FAP-111-45-00(6)



eMARS and PSCs

Written Copy versus eMARS version

- ♦ eMARS is the Official Procurement System
- ♦ eMARS document provides a mechanism for payment
- ♦ All Documents need to be clearly auditable in the system from RFP through award and payment
- ♦ Vendor evaluations should be entered into eMARS
- ♦ Procurement officers should be involved



Renewal Periods

Legislative Research Commission
Government Contract Review Committee
Multiyear Government Contracts
Revised

March 8, 2001

Policy Statement 99-4

- It shall be the policy of the Government Contract Review Committee of the Legislative Research Commission to consider for approval, only those personal service contracts, price contracts for personal services, memoranda of agreement, memoranda of understanding, program administration contracts, interlocal agreements (to which the Commonwealth is a party), privatization contracts, or similar devices and instruments under the jurisdiction of the committee that are entered into and concluded prior to the end of the biennium in which the contract or agreement was made.



Renewal Periods

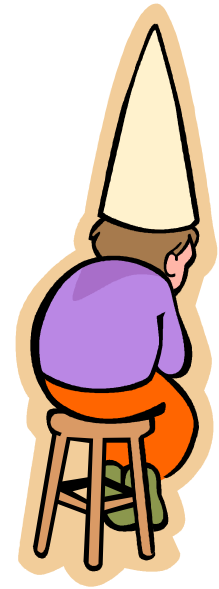
RFP's can only offer a contract for a two-year biennial period. This is particularly important in cases where the award was not based on a competitive RFP process

This is also the policy of the Finance Exceptions Committee.



How to Stay Out of Trouble

- Know when work can begin.
- Avoid Legislative Claims
- Send Requests to Finance Exceptions well in advance of need for services
- Know that there is no minimum for PSC procedures
- Utilize Competitive Negotiation procedures when at all possible
- Failure to plan or act does not constitute an emergency



Penalties

KRS 45A.990(4)

Any willful violation of KRS 45A.690 to 45A.725 shall be a Class A misdemeanor.

KRS 45A.990(6)

- Any employee or any official of the Commonwealth of Kentucky, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for, or to, or from, any person, partnership, firm, or corporation, offering, bidding for, or in open market seeking to make sales to the Commonwealth of Kentucky, shall be deemed guilty of a Class C felony.

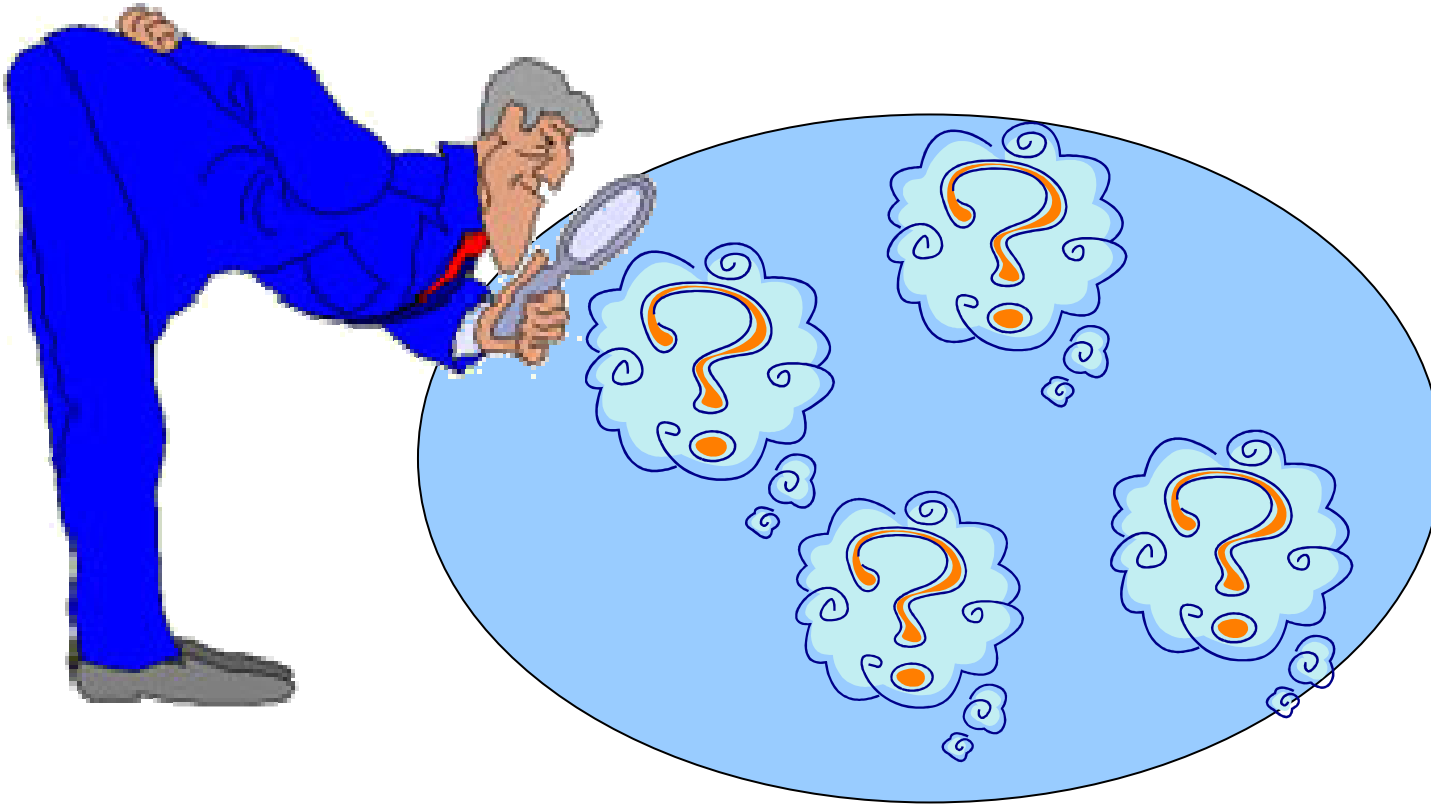


Session Review

- ♦ **The legalities of Personal Service Contract**
- ♦ **Critical Components of a PSC document**
- ♦ **The role of the Finance Exceptions Committee**
- ♦ **The role of the Government Contract Review Committee**
- ♦ **Contracts can only span a biennium**
- ♦ **There is no minimum dollar amount for a PSC**
- ♦ **Difference between a PSC and an MOA**
- ♦ **Situations to avoid**
- ♦ **The importance of eMARS in contracting**



Questions



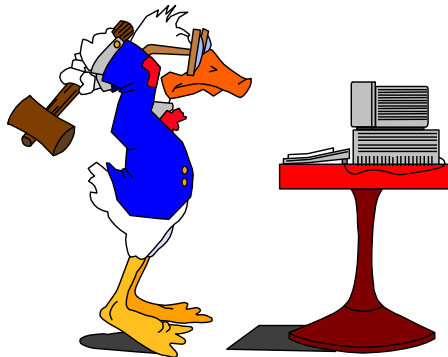
Support Organization

Customer Resource Center

- Help Desk Support
- Open Monday thru Friday 7:30 a.m. – 5:00 p.m. beginning July 3, 2006
- New Email to log requests. Place a meaningful subject on the email and a full description in the note

Finance.CRCGroup@ky.gov

502-564-9641 or toll-free 877-973-HELP



For PSC/MOA Specific ??

Darla Hoagland

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Office of Material and Procurement Services
Finance and Administration Cabinet
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502-564-4510

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Thanks for your time and attention

